

AMENDED IN SENATE APRIL 27, 1999

AMENDED IN SENATE APRIL 5, 1999

**SENATE BILL**

**No. 755**

**Introduced by Senator Hayden**

February 24, 1999

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An act to amend Section 65865 of the Government Code, and to amend Sections 21080.1, 21081, 21082.1, 21157, and 21167.6 of, and to add Sections 21080.6, 21090.2, and 21097 to, the Public Resources Code, relating to environmental quality.

LEGISLATIVE COUNSEL'S DIGEST

SB 755, as amended, Hayden. California Environmental Quality Act.

(1) The existing California Environmental Quality Act requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a project that it proposes to carry out or approve that may have a significant effect on the environment, as defined, or to adopt a negative declaration if the lead agency finds that the project will not have that effect, unless the project is exempt from the act.

This bill would require a lead agency to find that a project may have a significant impact on the environment and would require an environmental impact report to be prepared for a project if the lead agency makes specified findings. The bill would provide that an environmental document prepared pursuant to the act is not valid for use in a subsequent project if the certification of the document occurred more than 5

years before the filing of an application for that subsequent project. The bill also would authorize a lead agency to refuse to approve a project if it makes specified determinations.

(2) Existing law requires each public agency to mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so.

This bill would require a lead agency, when formulating mitigation measures for a draft environmental report, an environmental report, or a mitigated negative declaration, to comply with specified requirements. By imposing new duties on lead agencies, the bill would impose a state-mandated local program.

(3) Existing law provides that no public agency shall approve or carry out a project for which an environmental impact report has been certified that identifies one or more significant effects on the environment unless the public agency makes a specified finding. Under existing law, that specific finding may include a finding that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment.

This bill would provide that when making such a finding of overriding benefit, a potential increase in the public agency's revenues may not be considered a valid overriding benefit.

(4) Existing law authorizes a master environmental impact report to be prepared for specified projects, including a project that consists of smaller individual projects that will be carried out in phases.

This bill would require that if a master environmental impact report is prepared for that type of project, the master environmental project shall be certified prior to a lead agency's approval of any phase of the project.

(5) Existing law prescribes procedures governing any action or proceeding to attack, review, set aside, void, or annul specified acts or decisions of a public agency regarding a project reviewed under the act. Under existing law, the public agency is required, except as provided, to prepare and certify the record of proceedings for the action. Existing law provides for the parties to pay any costs or fees imposed for the preparation of the record.



This bill instead would require the parties to pay ~~all direct costs incurred to prepare the record, as provided~~ *a fee to cover the costs incurred to prepare the record of proceedings in the same manner as the costs for copies of public records are determined under the California Public Records Act.*

(6) Existing law authorizes any city, county, or city and county, to enter into a development agreement with any person having a legal or equitable interest in real property for the development of the property, as provided.

This bill would prohibit a city, county, or city and county, from approving a development agreement without prior or concurrent compliance with the act *and would require the lead agency to comply with the act for a project that will be carried out or approved pursuant to a development agreement prior to, or concurrently with, the approval of that development agreement.*

(7) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 65865 of the Government Code  
2 is amended to read:  
3 65865. (a) Any city, county, or city and county, may  
4 enter into a development agreement with any person  
5 having a legal or equitable interest in real property for  
6 the development of the property as provided in this  
7 article.

1 (b) Any city may enter into a development agreement  
2 with any person having a legal or equitable interest in real  
3 property in unincorporated territory within that city's  
4 sphere of influence for the development of the property  
5 as provided in this article. However, the agreement shall  
6 not become operative unless annexation proceedings  
7 annexing the property to the city are completed within  
8 the period of time specified by the agreement. If the  
9 annexation is not completed within the time specified in  
10 the agreement or any extension of the agreement, the  
11 agreement is null and void.

12 (c) No city, county, or city and county may approve a  
13 development agreement under this article without prior  
14 or concurrent compliance with the California  
15 Environmental Quality Act (Division 13 (commencing  
16 with Section 21000) of the Public Resources Code *for a*  
17 *project that will be carried out or approved pursuant to*  
18 *that development agreement.*

19 (d) Every city, county, or city and county, shall, upon  
20 request of an applicant, by resolution or ordinance,  
21 establish procedures and requirements for the  
22 consideration of development agreements upon  
23 application by, or on behalf of, the property owner or  
24 other person having a legal or equitable interest in the  
25 property.

26 (e) A city, county, or city and county may recover  
27 from applicants the direct costs associated with adopting  
28 a resolution or ordinance to establish procedures and  
29 requirements for the consideration of development  
30 agreements.

31 SEC. 2. Section 21080.1 of the Public Resources Code  
32 is amended to read:

33 21080.1. (a) The lead agency shall be responsible for  
34 determining whether an environmental impact report, a  
35 negative declaration, or a mitigated negative declaration  
36 shall be required for any project that is subject to this  
37 division. That determination shall be final and conclusive  
38 on all persons, including responsible agencies, unless  
39 challenged as provided in Section 21167.

(b) A lead agency shall find that a project may have a significant effect on the environment and shall require an environmental impact report to be prepared for the project if the lead agency makes any of the following findings:

(1) The project may ~~have an adverse effect on~~ *reduce the number or restrict the range of* an endangered, rare, threatened, or candidate species.

(2) The project has the potential to substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, or *threaten* to eliminate a plant or animal community.

(3) The project has the potential to eliminate an important example of a major period of California history or prehistory, ~~as determined by the lead agency.~~

(4) The project has the potential to achieve a short-term environmental goal to the disadvantage of a long-term environmental goal.

(5) The project has possible environmental effects that are individually limited but cumulatively considerable. For purposes of this paragraph, “cumulatively considerable” means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

(6) The potential environmental effect of a project may cause a substantial adverse effect on the public, either directly or indirectly.

(c) In the case of a project described in subdivision (c) of Section 21065, the lead agency shall, upon the request of a potential applicant, provide for consultation prior to the filing of the application regarding the range of actions, potential alternatives, mitigation measures, and any potential and significant effects on the environment of the project.

SEC. 3. Section 21080.6 is added to the Public Resources Code, to read:

21080.6. (a) When formulating mitigation measures for a draft environmental report, an environmental

1 report, or a mitigated negative declaration, a lead agency  
2 shall do all of the following:

3 (1) Recognize the significance of potential  
4 environmental effects that are identified through studies,  
5 expert opinion, and other evidence that is based upon  
6 relevant data in the record.

7 (2) Commit the agency to mitigate every impact  
8 identified for the project where feasible.

9 (3) Articulate specific performance criteria for  
10 mitigation of each identified impact and adopts one or  
11 more feasible mitigation measures that most completely  
12 mitigates the identified impact.

13 (b) Any mitigation measure approved by the lead  
14 agency shall have a funding source that is reasonably  
15 certain to be available at the time of the proposed  
16 implementation of that mitigation measure.

17 (c) In a phased project or a project for which a master  
18 environmental impact report has been prepared and  
19 certified pursuant to Section 21157, mitigation may be  
20 ~~phased to coincide with the actual impacts of the project,~~  
21 ~~as it is being completed.~~ *phased to coincide with the*  
22 *phases of the project, in order to mitigate or avoid effects*  
23 *on the environment and ensure compliance during*  
24 *project implementation.*

25 SEC. 4. Section 21081 of the Public Resources Code is  
26 amended to read:

27 21081. Pursuant to the policy stated in Sections 21002  
28 and 21002.1, no public agency shall approve or carry out  
29 a project for which an environmental impact report has  
30 been certified that identifies one or more significant  
31 effects on the environment that would occur if the  
32 project is approved or carried out unless both of the  
33 following occur:

34 (a) The public agency makes one or more of the  
35 following findings with respect to each significant effect:

36 (1) Changes or alterations have been required in, or  
37 incorporated into, the project that mitigate or avoid the  
38 significant effects on the environment.

39 (2) Those changes or alterations are within the  
40 responsibility and jurisdiction of another public agency

1 and have been, or can and should be, adopted by that  
2 other agency.

3 (3) Specific economic, legal, social, technological, or  
4 other considerations, including considerations for the  
5 provision of employment opportunities for highly trained  
6 workers, make infeasible the mitigation measures or  
7 alternatives identified in the environmental impact  
8 report.

9 (b) With respect to significant effects that were  
10 subject to a finding under paragraph (3) of subdivision  
11 (a), the public agency finds that specific overriding  
12 economic, legal, social, technological, or other benefits of  
13 the project outweigh the significant effects on the  
14 environment. For purposes of this subdivision, a potential  
15 increase in the public agency's revenues may not be  
16 considered a valid overriding benefit.

17 SEC. 5. Section 21082.1 of the Public Resources Code  
18 is amended to read:

19 21082.1. (a) Any draft environmental impact report,  
20 environmental impact report, or negative declaration  
21 prepared pursuant to the requirements of this division  
22 shall be prepared directly by, or under contract to, a  
23 public agency.

24 (b) This section is not intended to prohibit, and shall  
25 not be construed as prohibiting, any person from  
26 submitting information or other comments to the public  
27 agency responsible for preparing an environmental  
28 impact report, draft environmental impact report, or  
29 negative declaration. The information or other  
30 comments may be submitted in any format, shall be  
31 considered by the public agency, and may be included, in  
32 whole or in part, in any report or declaration.

33 (c) The lead agency shall do all of the following:

34 (1) Independently review and analyze any report or  
35 declaration required by this division.

36 (2) Circulate draft documents which reflect its  
37 independent judgment.

38 (3) As part of the adoption of a negative declaration  
39 or certification of an environmental impact report, find

1 that the report or declaration reflects the independent  
2 judgment of the lead agency.

3 (d) An environmental document prepared pursuant  
4 to the requirements of this division shall not be valid for  
5 use in a subsequent project if the certification of the  
6 document occurred more than five years before the filing  
7 of an application for that subsequent project.

8 SEC. 6. *Section 21090.2 is added to the Public*  
9 *Resources Code, to read:*

10 21090.2. *A lead agency shall comply with this division*  
11 *for a project that will be carried out or approved pursuant*  
12 *to a development agreement prior to, or concurrent with,*  
13 *approval of that development agreement, as required*  
14 *pursuant to subdivision (c) of Section 65865 of the*  
15 *Government Code.*

16 SEC. 7. Section 21097 is added to the Public Resources  
17 Code, to read:

18 21097. A lead agency may refuse to approve a project  
19 if it makes any of the following determinations:

20 (a) The applicant is not the real party in interest.

21 (b) The applicant has made a material  
22 misrepresentation or false statement in the application or  
23 during the environmental review process.

24 (c) The applicant has failed or refused to comply with  
25 terms or conditions imposed upon the applicant in other  
26 projects previously approved by the lead agency or by  
27 another lead agency.

28 ~~SEC. 7.—~~

29 SEC. 8. Section 21157 of the Public Resources Code is  
30 amended to read:

31 21157. (a) A master environmental impact report  
32 may be prepared for any one of the following projects:

33 (1) A general plan, element, general plan  
34 amendment, or specific plan.

35 (2) A project that consists of smaller individual  
36 projects that will be carried out in phases.

37 (3) A rule or regulation that will be implemented by  
38 subsequent projects.

39 (4) Projects that will be carried out or approved  
40 pursuant to a development agreement.



1 (5) Public or private projects that will be carried out  
2 or approved pursuant to, or in furtherance of, a  
3 redevelopment plan.

4 (6) A state highway project or mass transit project that  
5 will be subject to multiple stages of review or approval.

6 (7) A regional transportation plan or congestion  
7 management plan.

8 (8) A plan proposed by a local agency for the reuse of  
9 a federal military base or reservation that has been closed  
10 or that is proposed for closure.

11 (9) Regulations adopted by the Fish and Game  
12 Commission for the regulation of hunting and fishing.

13 (b) When a lead agency prepares a master  
14 environmental impact report, the document shall  
15 include all of the following:

16 (1) A detailed statement as required by Section 21100.

17 (2) A description of anticipated subsequent projects  
18 that would be within the scope of the master  
19 environmental impact report, that contains sufficient  
20 information with regard to the kind, size, intensity, and  
21 location of the subsequent projects, including, but not  
22 limited to, all of the following:

23 (A) The specific type of project anticipated to be  
24 undertaken.

25 (B) The maximum and minimum intensity of any  
26 anticipated subsequent project, such as the number of  
27 residences in a residential development, and, with regard  
28 to a public works facility, its anticipated capacity and  
29 service area.

30 (C) The anticipated location and alternative locations  
31 for any development projects.

32 (D) A capital outlay or capital improvement program,  
33 or other scheduling or implementing device that governs  
34 the submission and approval of subsequent projects.

35 (3) A description of potential impacts of anticipated  
36 subsequent projects for which there is not sufficient  
37 information reasonably available to support a full  
38 assessment of potential impacts in the master  
39 environmental impact report. This description shall not

1 be construed as a limitation on the impacts that may be  
2 considered in a focused environmental impact report.

3 (c) Lead agencies may develop and implement a fee  
4 program in accordance with applicable provisions of law  
5 to generate the revenue necessary to prepare a master  
6 environmental impact report.

7 (d) If a lead agency prepares a master environmental  
8 impact report for a project described in paragraph (2) of  
9 subdivision (a), the master environmental impact report  
10 shall be certified prior to, or concurrent with, a lead  
11 agency's approval of any phase of the project.

12 ~~SEC. 8.—~~

13 *SEC. 9.* Section 21167.6 of the Public Resources Code  
14 is amended to read:

15 21167.6. Notwithstanding any other provision of law,  
16 in all actions or proceedings brought pursuant to Section  
17 21167, except those involving the Public Utilities  
18 Commission, all of the following shall apply:

19 (a) At the time that the action or proceeding is filed,  
20 the plaintiff or petitioner shall file a request that the  
21 respondent public agency prepare the record of  
22 proceedings relating to the subject of the action or  
23 proceeding. The request, together with the complaint or  
24 petition, shall be served upon the public agency not later  
25 than 10 business days from the date that the action or  
26 proceeding was filed.

27 (b) (1) The public agency shall prepare and certify  
28 the record of proceedings not later than 60 days from the  
29 date that the request specified in subdivision (a) was  
30 served upon the public agency. Upon certification, the  
31 public agency shall lodge a copy of the record of  
32 proceedings with the court and shall serve on the parties  
33 notice that the record of proceedings has been certified  
34 and lodged with the court. The parties shall ~~pay all direct~~  
35 ~~costs incurred to prepare the record of proceedings. For~~  
36 ~~purposes of this section, "direct costs" includes only the~~  
37 ~~cost to duplicate a document and does not include any~~  
38 ~~cost incurred for the retrieval, inspection, or handling of~~  
39 ~~a file from which a document is extracted.~~ *pay a fee to*  
40 *cover the costs incurred to prepare the record of*

1 *proceedings in the same manner as the costs for copies of*  
2 *public records are determined pursuant to subdivision*  
3 *(b) of Section 6253 of the Government Code.*

4 (2) The plaintiff or petitioner may elect to prepare the  
5 record of proceedings or the parties may agree to an  
6 alternative method of preparation of the record of  
7 proceedings, subject to certification of its accuracy by the  
8 public agency, within the time limit specified in this  
9 subdivision.

10 (c) The time limit established by subdivision (b) may  
11 be extended only upon the stipulation of all parties who  
12 have been properly served in the action or proceeding or  
13 upon order of the court. Extensions shall be liberally  
14 granted by the court when the size of the record of  
15 proceedings renders infeasible compliance with that time  
16 limit. There is no limit on the number of extensions that  
17 may be granted by the court, but no single extension shall  
18 exceed 60 days unless the court determines that a longer  
19 extension is in the public interest.

20 (d) If the public agency fails to prepare and certify the  
21 record within the time limit established in subdivision  
22 (b), or any continuances of that time limit, the plaintiff  
23 or petitioner may move for sanctions, and the court may,  
24 upon that motion, grant appropriate sanctions.

25 (e) The record of proceedings shall include, but is not  
26 limited to, all of the following items:

27 (1) All project application materials.

28 (2) All staff reports and related documents prepared  
29 by the respondent public agency with respect to its  
30 compliance with the substantive and procedural  
31 requirements of this division and with respect to the  
32 action on the project.

33 (3) All staff reports and related documents prepared  
34 by the respondent public agency and written testimony  
35 or documents submitted by any person relevant to any  
36 findings or statement of overriding considerations  
37 adopted by the respondent agency pursuant to this  
38 division.

39 (4) Any transcript or minutes of the proceedings at  
40 which the decisionmaking body of the respondent public

1 agency heard testimony on, or considered any  
2 environmental document on, the project, and any  
3 transcript or minutes of proceedings before any advisory  
4 body to the respondent public agency that were  
5 presented to the decisionmaking body prior to action on  
6 the environmental documents or on the project.

7 (5) All notices issued by the respondent public agency  
8 to comply with this division or with any other law  
9 governing the processing and approval of the project.

10 (6) All written comments received in response to, or  
11 in connection with, environmental documents prepared  
12 for the project, including responses to the notice of  
13 preparation.

14 (7) All written evidence or correspondence submitted  
15 to, or transferred from, the respondent public agency  
16 with respect to compliance with this division or with  
17 respect to the project.

18 (8) Any proposed decisions or findings submitted to  
19 the decisionmaking body of the respondent public  
20 agency by its staff, or the project proponent, project  
21 opponents, or other persons.

22 (9) The documentation of the final public agency  
23 decision, including the final environmental impact  
24 report, mitigated negative declaration, or negative  
25 declaration, and all documents, in addition to those  
26 referenced in paragraph (3), cited or relied on in the  
27 findings or in a statement of overriding considerations  
28 adopted pursuant to this division.

29 (10) Any other written materials relevant to the  
30 respondent public agency's compliance with this division  
31 or to its decision on the merits of the project, including  
32 the initial study, any drafts of any environmental  
33 document, or portions thereof, that have been released  
34 for public review, and copies of studies or other  
35 documents relied upon in any environmental document  
36 prepared for the project and either made available to the  
37 public during the public review period or included in the  
38 respondent public agency's files on the project, and all  
39 internal agency communications, including staff notes

1 and memoranda related to the project or to compliance  
2 with this division.

3 (11) The full written record before any inferior  
4 administrative decisionmaking body whose decision was  
5 appealed to a superior administrative decisionmaking  
6 body prior to the filing of litigation.

7 (f) In preparing the record of proceedings, the party  
8 preparing the record shall strive to do so at reasonable  
9 cost in light of the scope of the record.

10 (g) The clerk of the superior court shall prepare and  
11 certify the clerk's transcript on appeal not later than 60  
12 days from the date that the notice designating the papers  
13 or records to be included in the clerk's transcript was filed  
14 with the superior court, if the party or parties pay any  
15 costs or fees for the preparation of the clerk's transcript  
16 imposed in conformance with any law or rules of court.  
17 Nothing in this subdivision precludes an election to  
18 proceed by appendix, as provided in Rule 5.1 of the  
19 California Rules of Court.

20 (h) Extensions of the period for the filing of any brief  
21 on appeal may be allowed only by stipulation of the  
22 parties or by order of the court for good cause shown.  
23 Extensions for the filing of a brief on appeal shall be  
24 limited to one 30-day extension for the preparation of an  
25 opening brief, and one 30-day extension for the  
26 preparation of a responding brief, except that the court  
27 may grant a longer extension or additional extensions if  
28 it determines that there is a substantial likelihood of  
29 settlement that would avoid the necessity of completing  
30 the appeal.

31 (i) At the completion of the filing of briefs on appeal,  
32 the appellant shall notify the court of the completion of  
33 the filing of briefs, whereupon the clerk of the reviewing  
34 court shall set the appeal for hearing on the first available  
35 calendar date.

36 ~~SEC. 9.—~~

37 *SEC. 10.* Notwithstanding Section 17610 of the  
38 Government Code, if the Commission on State Mandates  
39 determines that this act contains costs mandated by the  
40 state, reimbursement to local agencies and school

1 districts for those costs shall be made pursuant to Part 7  
2 (commencing with Section 17500) of Division 4 of Title  
3 2 of the Government Code. If the statewide cost of the  
4 claim for reimbursement does not exceed one million  
5 dollars (\$1,000,000), reimbursement shall be made from  
6 the State Mandates Claims Fund.

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